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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on New Jersey state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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ED 382 539

Antidote: Civic Responsibility

New Jersey Law

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no New Jersey law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor. Their parents, however, may be in violation of New Jersey law. Neglect of a child includes "willfully failing to provide proper and sufficient food, clothing, maintenance. . . " NJ Stat. Ann. §9:6-1 (1993). NJ Stat. Ann. §9:6-3 makes it unlawful for any parent, guardian or person having the care, custody and control of any child to neglect the child. In addition to a fine, the children may be removed from the care and custody of the parent or guardian.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

No. NJ Stat. Ann. §9:17B(1)(b) (1993) requires persons be 21 and older to consume and purchase alcoholic beverages. Tyrell cannot drink wine at dinner.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Possession of marijuana, a controlled substance, is illegal. NJ Stat. Ann. §2C:35-5 (1992). Maria assisted her roommates in obtaining possession of this controlled substance. She might be charged with conspiracy to possess marijuana. "A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. NJ Stat. Ann. §2C:5-2 (Supp. 1993).

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

The twins might be charged with simple assault. A person is guilty of this in New Jersey if s/he "(1)Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;. . . or (3) Attempts by physical menace to put another in fear of imminent serious bodily injury. Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense." NJ Stat. Ann. §2C:12-1 (Supp. 1993).

5. Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?

It is illegal for individuals under 21 to knowingly possess alcoholic beverages without legal authority or to consume alcoholic beverages in automobiles according to N.J. Rev. Stat. §2C:33-15(a) (1992). In addition to a fine of not less than $500, violators have their license to drive suspended or postponed for 6 months and may be required to attend an alcohol education or treatment program. TJ is clearly in violation of this law. Jose may be in violation if possession is broadly defined.

N.J. Rev. Stat. §39:4-51a (1992) is New Jersey's open container prohibition law. It states that a person shall not consume an alcohol beverage while operating a motor vehicle nor while in a passenger in the vehicle while it is being operated. According to the statute a person is presumed to have consumed an alcoholic beverage in violation of this section if an unsealed container of an alcoholic beverage is located in the passenger compartment, the contents of which have been partially consumed and other physical appearance or conduct of the operator or passenger of the may be associated with the consumption of an alcoholic beverage. Unsealed means a container with its original seal broken or a container such as a glass or a cup.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Further, Dr. Melrose is in violation of New Jersey law. It is unlawful for any person to knowingly or purposely manufacture, distribute or dispense or to possess or have under his control with the intent to manufacture, distribute or dispense a controlled or dangerous substance. NJ Rev. Stat. §2C:35-5 (1992). While he is a physician and lawfully able to dispense controlled substances, his behavior in this instance was in violation of the law. His intention was not to dispense controlled substances in good faith, for valid medical reasons. Rather, he intended to dispense drugs at the request of a patient, in bad faith. Thus, his behavior is unlawful.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is also violating New Jersey law. It is unlawful for any person to knowingly or purposely manufacture, distribute or dispense or to possess or have under his control with the intent to manufacture, distribute or dispense a controlled or dangerous substance. NJ Rev. Stat. §2C:35-5 (1992). Danielle is unlawfully possessing the drugs she is taking from other people's prescriptions. She might be charged with theft of movable property under NJ Stat. Ann. §2C:20-3(a) (1982) which states that a "person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with the purpose to deprive him thereof.

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Renee is also violating New Jersey law. It is unlawful for any person to knowingly or purposely manufacture, distribute or dispense or to possess or have under his control with the intent to manufacture, distribute or dispense a controlled or

dangerous substance. NJ Rev. Stat. §2C:35-5 (1992). Using her daughter Mary to assist in her drug distribution further increases her illegal activity. Any person at least 18 who knowingly uses, solicits, directs, hires or employs a person 17 or younger to violate NJ drug control laws in violation of NJ Rev. Stat. §2C:35-6 (1992). If her sales were near a school she is also in violation of NJ Rev. Stat. §2C:35-7 (1992).

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. §841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. §844 prohibits simple possession of a controlled substance.

He is also violating NJ Stat. Ann. §24:21-51 (Supp. 1993) by possessing a syringe and by sharing the syringe with Andre.

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Bulldog's and the bartender may be civilly liable for serving Su. According to NJ Stat. Ann. §2A:22A-5 "A person who sustains personal injury or property damage as a result of the negligent service of alcoholic beverages by a licensed alcoholic beverage server may recover damages from a licensed beverage server only if:" (1) The server is deemed negligent; (2) The injury was proximately caused by the negligent service of alcoholic beverages and (3) The injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages. "A licensed alcoholic beverage server shall be deemed to have been negligent only when the server served a visibly intoxicated person . . ." Id.

Lesson 2

CRIMINAL JUSTICE STATISTICS: DRUG AND ALCOHOL RELATED OFFENSES

UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990
A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

Lesson 5

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for between 10 and 20 years and • a possible fine not to exceed $300,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for between 10 and 20 years and • a possible fine not to exceed $300,000
First Offense: Codeine - Possession - 200 mg	• imprisonment for between 3 and 5 years, and • a possible fine not to exceed $50,000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for between 5 and 10 years and • a possible fine not to exceed $15,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for between 5 and 10 years, and • a possible fine not to exceed $50,000

Cite: N.J. Stat. § 2C: 35-5

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Section 39:4-50 makes it illegal for any person to drive under the influence of alcohol or drive with a blood alcohol concentration level of 0.10.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

The New Jersey code does not distinguish between DWI and DUI.

4. **What are the penalties for being convicted of DWI? DUI?**

The penalties under § 39:4-50 are as follow:

CONVICTION	PUNISHMENT
first	• fine of $250 to $400, and /or • imprisonment for up to 30 days, and • detention in intoxicated driver resource center for 12 to 48 hours (at least 6 hours per day) at the court's discretion, and • suspension of driving privileges for 6 months to 1 year
second (within 10 years)	• fine of $500 to $1000, and/or • imprisonment for 48 hours to 90 days, and • community service for up to 30 days, and • suspension of driving privileges for 2 years
third and subsequent (within 10 years)	• fine of $1000, and/or • imprisonment for 90 to 180 days, • community service at the judge's discretion, • suspension of driving privileges for 10 years

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §39:4-50.2 any person who drives on the roads of New Jersey consents to a breathalyzer test. If a person refuses to submit to a test his/her driving privileges will be revoked for 6 months for the first violation and 2 years for subsequent refusals.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated.**

Under §39:4-50 one's BAC must be 0.10 to be legally intoxicated.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. New Jersey does not lower the BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

New Jersey has no specific open container law. However, under §2C:33-15 it is illegal for any person under 21 to purchase, possess or consume alcohol in a motor vehicle. If person is under 17 the suspension will commence the day the sentence is imposed and run until 6 months after the person reaches 17.

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Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, MN, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.